

STATE OF MICHIGAN
COURT OF APPEALS

ANDREA COX, a Minor, through her Next
Friend, ANDREA LANDRUM, and ANDREA
LANDRUM, Individually,

UNPUBLISHED
February 23, 2006

Plaintiffs-Appellees,

v

AUTO CLUB INSURANCE ASSOCIATION,

No. 263235
Wayne Circuit Court
LC No. 04-421608-NF

Defendant-Appellant,

and

PROGRESSIVE MICHIGAN INSURANCE
COMPANY,

Defendant-Appellee.

Before: Hoekstra, PJ, and Neff and Owens, JJ.

PER CURIAM.

Defendant, Auto Club Insurance Association (ACIA), appeals as of right from a partial consent judgment. On appeal, ACIA takes issue with a previous order that denied ACIA's motion for summary disposition and found that ACIA was in the first order of priority to provide personal protection insurance (PIP) benefits to Andrea Cox (Andrea). We reverse.

ACIA argues that the trial court erred when it found that Andrea was domiciled with both her mother, Andrea Landrum (Landrum), and her father, Gregory Cox (Greg), and in turn concluded that Andrea was entitled to receive PIP benefits from Greg's ACIA insurance policy. We agree.

A trial court's decision to grant or deny summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Review is limited to the evidence presented to the trial court at the time the motion was decided. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the submitted admissible evidence in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition is proper if the evidence shows there is

no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002). A genuine issue of material fact exists if the record, giving the benefit of reasonable doubt to the nonmoving party, leaves open an issue on which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003).

A PIP policy covers “accidental bodily injury to the person named in the policy, the person’s spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.” MCL 500.3114(1). It is undisputed that Greg had a PIP policy with ACIA and that Andrea suffered injuries as the result of a motor vehicle accident. Although a spouse need not be, any other relative must be domiciled in the same household as the person named in the policy to be eligible for PIP benefits. *Auto Club Ins Ass’n v State Farm Ins Co*, 221 Mich App 154, 165; 561 NW2d 445 (1997), overruled on other grounds *CAM Constr v Lake Edgewood Condo Ass’n*, 465 Mich 549; 640 NW2d 256 (2002). Had the court found that Andrea was not domiciled in Greg’s household, and in turn not covered by Greg’s policy, Andrea would have received PIP benefits from “the insurer of the owner or registrant of the vehicle occupied,” which, in this case, would be defendant Progressive Michigan Insurance Company (Progressive). MCL 500.3114(4)(a). Here, the trial court denied ACIA’s motion for summary disposition and found that ACIA bore the responsibility to provide Andrea with PIP benefits because Andrea was a relative domiciled in both Greg’s household and Landrum’s household.

When the underlying facts are not in dispute, as is the case here, the determination of domicile for purposes of determining whether no-fault insurance benefits are applicable is to be decided as a matter of law. *Fowler v Auto Club Ins Ass’n*, 254 Mich App 362, 363-364; 656 NW2d 856 (2002). A person generally only has one domicile.¹ *Vanguard Insurance Co v Racine*, 224 Mich App 229, 233; 568 NW2d 156 (1997). “Several factors should be considered in determining domicile, and these factors should be weighed or balanced with each other because no one factor is determinative.” *Id.* at 364, citing *Univ of Michigan Regents v State Farm Mut Ins Co*, 250 Mich App 719, 730; 650 NW2d 129 (2002). When determining whether an individual is domiciled in the same household as the insured, the court should consider:

(1) the subjective or declared intent of the claimant to remain indefinitely in the insured’s household, (2) the formality of the relationship between the claimant and the members of the household, (3) whether the place where the claimant lives is in the same house, within the same curtilage, or upon the same premises as the insured, and (4) the existence of another place of lodging for the person alleging

¹ Although under the Child Custody Act, MCL 722.21 *et seq.*, a child may have a legal residence with both parents, MCL 722.31(1), this is not the case when the order governing custody grants sole legal custody to one parent, MCL 722.31(2). *Sehlke v Vandermaas*, 268 Mich App 262, 265; ___ NW2d ___ (2005). In this case, the 1993 consent judgment of divorce awarded Landrum the care, custody, maintenance and education of Andrea; provided that Landrum’s residence was Andrea’s domicile; and granted Greg visitation privileges. Hence, sole custody was granted to Landrum, and MCL 722.31(1) did not apply.

domicile. [*Id.*, citing *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979).]

Other factors to consider when determining if a child is domiciled in the same household as an insured parent include:

(1) whether the child continues to use the [parent's] home as the child's mailing address, (2) whether the child maintains some possessions with the parents, (3) whether the child uses the [parent's] address on the child's driver's license or other documents, (4) whether a room is maintained for the child at the [parent's] home, and (5) whether the child is dependent upon the [parent] for support. [*Id.* at 364-365, citing *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 112; 553 NW2d 353 (1996).]

Here, the accident that Andrea was injured in occurred on November 9, 2002, while Andrea was attending school in Southfield and living at Landrum's Southfield residence. After Andrea was released from the hospital, she returned to the Southfield residence where Landrum took care of her. Andrea received all her mail at the Southfield residence, used the Southfield address when she applied for jobs, and the Southfield address appeared on Andrea's driver's license. Furthermore, Andrea stated that she considered the Southfield residence to be her home. Landrum and Greg both stated that Andrea mostly lived at the Southfield residence with Landrum, who had sole custody of Andrea, and only stayed with Greg during the summer months and some weekends. In *Vanguard, supra*, we noted that the parent with whom the child spent the majority of time and who had physical custody of the child was the parent with whom the child was domiciled. Therefore, Andrea was domiciled in Landrum's Southfield residence, *Fowler, supra*, pp 363-365, and the court erred when it determined that Andrea was domiciled with Greg.

Reversed.

/s/ Joel P. Hoekstra
/s/ Janet T. Neff
/s/ Donald S. Owens